

# **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

EARL R. HOBBS, individually and on behalf of all others similarly situated,	)	
	)	
Plaintiff,	)	No. 07 C 6730
	)	
vs.	)	Judge Bucklo
	)	
TCF BANK,	)	Magistrate Judge Brown
	)	
Defendant.	)	

**DECLARATION OF MARK W. GAULT**

I, Mark W. Gault, declare:

1. I know all of the following facts of my own personal knowledge and, if called and sworn as a witness, could and would testify competently thereto.

2. I am Senior Vice President, Retail Banking, of TCF National Bank ("TCF"), the proper Defendant in this action. As a result of my work duties and responsibilities for TCF, I am familiar with TCF's regular record keeping practices relating to consumer deposit accounts, including account agreements and account histories, among other records.

3. Consumer account records, including agreements, correspondence, and transaction histories, are maintained by TCF in the ordinary course of business. The entries in those records are required to be accurate, and to be made near in time to the events they describe. I and others at TCF regularly access and rely on these records to review and make decisions about accounts, and to provide account information to customers.

4. In connection with this action brought against TCF by Plaintiff Earl R. Hobbs ("Plaintiff"), I accessed the business records of TCF for the account of Earl Hobbs

("Hobbs"). I obtained the information and documents described below from those business records.

5. Attached hereto as Exhibit A is a true and correct copy of the Account Agreement between Hobbs and TCF for Account No. \*\*\*\*\*1221, dated April 19, 2003. The Account remained open as of August 22, 2007, and was closed on or about October 2007.

6. Attached hereto as Exhibit B is a true and correct copy of the Terms and Conditions for Checking and Savings Accounts ("Terms and Conditions"), effective January 3, 2003, which are referred to and incorporated into Hobbs' Account Agreement. *See* Exh. A, p.1. The Terms and Conditions contain an Arbitration Clause, which included a class action waiver. *See* Exh. B, pp.3-4.

7. In the third box on page 2 of the Account Agreement, Hobbs signed his initials to indicate that he "under[stood] and agree[d]" to the Arbitration Clause in the Terms and Conditions. *See* Exh. A, p.2.

8. Attached hereto as Exhibit C is a true and correct copy from the business records of TCF of a document entitled Important Legal Notice of Changes and Additions to Your Account Contract Relating to: Arbitration of Disputes, Electronic Fund Transfers Services, and Deposited Account Services and Prices, dated January 14, 2005 ("Legal Notice"). TCF sent this Legal Notice to its deposit customers who maintained an open deposit account with TCF as of January 14, 2005 as an enclosure to their January 2005 periodic account statement or by other forms of direct mail delivery. The purpose of this Legal Notice was, among other things, to inform customers of changes to the arbitration provision within the Terms and Conditions of their Account Agreements ("Revised

Arbitration Provision"). As stated in the Legal Notice, customers who did not want the Revised Arbitration Provision to apply to them had the right to reject it by sending a written rejection notice to TCF by March 15, 2005.

9. Attached hereto as Exhibit D is a true and correct, redacted copy from the business records of TCF of Hobbs' January 2005 account statement, which indicates that the Legal Notice was enclosed therein.

10. The records for Hobbs' account do not contain any correspondence or other indication that he ever rejected in writing, or otherwise, the arbitration provisions in the Legal Notice by March 15, 2005, or that he otherwise ever communicated in any fashion with TCF regarding those arbitration provisions.

11. Attached hereto as Exhibit E is a true and correct copy from the business record of TCF of the Deposit Account Services and Prices Schedule ("Services and Prices Schedule"), effective February 1, 2003, which sets forth the prices for additional services that TCF offers its customers. The Services and Prices Schedule is part of Plaintiff's "Account Contract", as indicated in the Terms and Conditions in Exhibit B, p.2, and it specifically states that TCF charges a fee when a customer uses a TCF ATM to access a non-TCF account. See Exh. E, p.2 note b.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 6th day of February 2008.

  
Mark W. Gault

## **EXHIBIT A**

## TCF National Bank - Account Agreement

Date	Account Numbers	Type of Account	Beginning Interest Rate	Beginning Annual Percentage Yield	Opening Balance	Cards Requested
04/19/02	1221					
EARL H0888 AND PATRICIA H0888			CARD-NO. CARD-NO.			

holds the above account(s) at TCF National Bank ("TCF"). This account is transferable only on the records of TCF (checking accounts are not transferable). This means that if I/we transfer the account (such as by selling the account or pledging the account as collateral for a loan) TCF is not required to honor the transfer unless the transfer is recorded on TCF's account records.

My/Our account exists as soon as I/we make a deposit to it. TCF is not required to allow withdrawals from the account, however, until this Agreement is signed by all customers and returned to TCF. If my/our account pays interest, the interest rate on the account can change without notice to me/us (except on certificate of deposit accounts). Changes in the interest rate will change the Annual Percentage Yield.

By signing this Agreement, I/we state that I/we have received a copy of this Agreement, TCF's Checking and Savings Account Terms and Conditions or TCF's Terms and Conditions for Certificates, TCF's Agreement for Electronic Fund Transfers Services, TCF's Deposit Account Services and Prices Brochure, TCF's Current Rates and Yields Schedule, TCF's Privacy Policy, and TCF's Funds Availability Schedule for Checking and Savings Accounts, all of which are part of my/our Account Contract with TCF. By signing, I/we also state that I/we are requesting Electronic Fund Transfers ("EFT") services for the accounts indicated above (except for certificate of deposit accounts).

I/we agree to give TCF certain information with my/our application to obtain a TCF account. I/we also authorize TCF to obtain consumer reports (including credit scores such as FICO scores) and other types of financial and personal information about me/us from third parties, including consumer reporting agencies. TCF may obtain this information when I/we request a TCF account and at any later time. I/we agree to furnish TCF with current information about my/our financial situation whenever TCF asks for this information.

A "consumer report," sometimes call a "credit bureau," is any written, oral, or other communication from a consumer reporting agency, including credit scores (such as FICO scores), which bears on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for: (a) credit or insurance to be used primarily for personal, family or household purposes; (b) employment purposes; or (c) any other purpose authorized under section 604 of the Fair Credit Reporting Act.

I/we authorize TCF to use this information in the course of its banking business, such as when TCF: (a) decides whether to open an account for me/us; (b) reviews or collects my/our account; and (c) assigns a code to my/our account that is used to determine whether to pay my/our checks or other transactions, as described in the Terms and Conditions.

TCF is part of the TCF family of companies (which include TCF National Bank, TCF Mortgage Corporation, TCF Agency, Inc., TCF Agency Insurance Services, Inc., TCF Financial Insurance Agency, Inc., TCF Securities, Inc., and TCF Express Trade, Inc.). I/we also authorize TCF and any company that is part of the TCF family to use the information to determine whether to offer me/us other products and services. I/we understand that I/we have a right to "opt out" of TCF's sharing of consumer reports and information from my/our application with other TCF family companies as explained in TCF's Privacy Policy.

I/we agree that TCF may report information about my/our account to others at any time.

I understand and agree: 1. Initial Earl 2. Initial Patricia 3. Initial    4. Initial   

I am a U.S. citizen or permanent legal resident of the U.S. 1. ☒ Yes ☐ No 2. ☐ Yes ☐ No 3. ☐ Yes ☐ No 4. ☐ Yes ☐ No

Are the addresses (permanent or alternate) of all account holders located in the U.S.? ☒ Yes ☐ No

Occupation: 1. KA T&S 2.    3.    4.   

For Custodial Ownership Only: If I/we are the custodian, I/we name   

as successor custodian in the event of my/our death, resignation, or legal incapacity.

For Fiduciary Ownership Only: The entire beneficiary interest of this account ☐ is ☐ is not held by natural persons.

For Information about TCF's sharing of information within TCF and with parties outside of TCF, see TCF's Privacy Policy.

## Taxpayer Identification Number Certification

Under penalties of perjury, I/we certify:

(1) that the social security number or employer tax identification number shown on this form is my correct taxpayer identification number (or I'm waiting for a number to be issued to me); and (2) that I'm not subject to backup withholding because a) I'm exempt from backup withholding, or b) I have not been notified that I'm subject to backup withholding as a result of a failure to report all interest or dividends, or c) the Internal Revenue Service has notified me that I'm no longer subject to backup withholding, and (3) I'm a U.S. person (including a U.S. resident alien).

Note: Cross out statement (2) if I'm subject to backup withholding due to under-reporting of interest or dividends, and I have not received a notice from the IRS advising me that backup withholding has terminated.

Signature Earl Date 4/19/02

For information about TCF's sharing of information within TCF and with parties outside of TCF, see TCF's Privacy Policy.

**Transfer Identification Number Confirmation**

Under penalties of perjury, this certifies that the social security number or employer tax identification number shown on this form is my correct "transfer identification number" (or in writing for a transfer to be issued to me), and (2) that I'm not subject to backup withholding because a) I'm exempt from backup withholding, or b) I have not been notified that I'm subject to backup withholding as a result of a failure to report all interest or dividends, or c) my former financial institution has notified me that I'm no longer subject to backup withholding, and (3) I'm a U.S. person (including a U.S. resident alien).

Note: Cross out statement (2) if I'm subject to backup withholding due to under-reporting of interest or dividends, and I have not received a notice from the IRS stating me that backup withholding has terminated.

Signature [Signature] Date 4/19/03

By signing, this certifies that all the terms of the Account Contract (We also state that all the information I've given is true. We state that we have received a copy of, agree to the terms of, and authorize disclosure pursuant to TCF's Privacy Policy. We certify that I've not changed the account on behalf of a financial institution as that term is defined in the Bank Secrecy Act.

Signature [Signature] Date 4/19/03

Signature [Signature] Date 4/19/03

Signature [Signature] Date 4/19/03

NOTES: UNDER THIS ACCOUNT MAY BE SUBJECT TO SENDING INFORMATION IF EITHER WE OR TCF SO ELECT. IF TCF ELECTS TO ANTICIPATE ANY SUCH DISPUTE, WE WILL HAVE NO RIGHT TO A JURY TRIAL FOR THAT DISPUTE, AND VICE VERSA, AND CERTAIN OTHER CONSEQUENCES APPLY. SEE "ARBITRATION" IN THE TERMS AND CONDITIONS.

I understand and agree: 1. Initial [Initials] 2. Initial [Initials] 3. Initial [Initials] 4. Initial [Initials]

FOLLOWING NOTICE APPLIES TO ALL DEPOSIT ACCOUNTS WITH CHECK OR EFT (ELECTRONIC FUND TRANSFER) ACCESS: A CURRENT INFORMATION CHANGE IS FOR PER CHECK, ITEM, OR OTHER TRANSACTION INCLUDING TCF, EXPRESS, ANY CARD, TCF, EXPRESS TELLER, CHECK CARD, AND, IF AVAILABLE, MONEY MANAGER PREPARED CARD TRANS. THE CHANGE IS FOR WHETHER OR NOT TCF PAYS THE CHECK, ITEM, OR OTHER TRANSACTION. THE CHANGE IS SUBJECT TO CHANGE. SEE THE ACCOUNT INFORMATION PACKET FOR MORE DETAILS.

I understand and agree: 1. Initial [Initials] 2. Initial [Initials] 3. Initial [Initials] 4. Initial [Initials]

Outstanding Accounts Only: Payment of Outstanding Account Activity (Applicable to all checking accounts) held or have had a check(s) accounted for the following financial institution(s) in the past 12 months: 53 Bank

These accounts, including any closed without my/our consent for the past 12 months stated here (if this sentence does not apply, state none).

I have not had any knowledge of a crime because of the use of a check or similar item within the past 24 months.

## **EXHIBIT B**



All of you are responsible for each transaction on the Account, no matter who completes the transaction. Each of you is responsible for overdrafts created by the other joint tenants, even if you did not create the overdraft yourself or benefit from the overdraft. Each of you given up any rights you have under the law protecting you from liability for overdrafts caused by the other joint tenants. TCF may accept checks or other items for deposit payable to one or more of you even if they are not endorsed on the back.

All joint tenants agree that if one of the joint tenants owes TCF money, TCF may use the entire amount in the joint Account to pay the debt, unless doing so would be prohibited by law. TCF does not have to first determine how much of the deposit has been contributed by each joint tenant.

#### TRUST ACCOUNTS

If you open an Account in trust (or "payable on death") ownership, only you, as Trustee, can deposit or withdraw from the Account balance. If you die, TCF pays the Account in equal amounts to the beneficiaries named on your Account Agreement who are living at the time of your death. If there is more than one trustee, the trustees hold the Account as "joint tenants with the rights of survivorship" and the joint Tenancy provisions above apply to them. When the last trustee dies, TCF pays the Account balance in equal amounts to the beneficiaries named in your Account Agreement who are living at the time of the last trustee's death. If all beneficiaries die before the trustees, the Account is no longer a trust Account.

#### CUSTODIAL ACCOUNTS

If you open an Account as "custodian" for a minor under Uniform Transfers (Gift) to Minors Act (the "Act"), you control the money on behalf of the minor until the minor reaches the age stated in the Act. TCF will accept withdrawal and other requests from you as custodian. You are responsible for complying with the provisions of the Act. TCF is not responsible for making sure you comply with the Act.

#### TENANTS-IN-COMMON ACCOUNTS

If you open an Account in tenants-in-common ownership, this means that you own a share of the money in the Account separately from the other owner(s). You share equally in the Account with the other owners unless you have indicated your share of the Account after your signature on TCF's Account Agreement. TCF requires all owners' signatures for withdrawal or other requests related to this Account.

TCF may accept checks or other items for deposit payable to one or more of you even if they are not endorsed on the back.

#### FIDUCIARY ACCOUNTS

If you open an Account in fiduciary ownership, this means that you hold the money in the Account for someone else's benefit. You understand that TCF serves only as a depository for the money. TCF is not responsible for making sure that you fulfill your duties as a fiduciary. TCF requires all fiduciaries' signatures for withdrawals or other requests unless all fiduciaries indicate otherwise.

TCF may accept checks or other items for deposit even if they are not endorsed on the back.

#### CAMPUS CARD CHECKING ACCOUNTS (WHERE OFFERED)

You agree that the university issuing your identification card may release to TCF certain directory information regarding your status as a student of the university as may be necessary to open and maintain your Campus Card account. You hereby waive your rights under the Federal Family Education Rights and Privacy Act to allow the university to release this information to TCF.

## Terms and Conditions for Checking and Savings Accounts

Effective January 3, 2003

[www.tcfexpress.com](http://www.tcfexpress.com)

**TCF  
BANK**

**TCF  
BANK**

## GENERAL PROVISIONS APPLYING TO ALL CHECKING AND SAVINGS ACCOUNTS

### DEFINITIONS

"You" and "your" mean each customer.

"TCF" or "TCF Bank" means TCF National Bank.

"Account" means any TCF checking account or savings account you hold, unless stated differently. If you hold more than one Account, "Account" means all Accounts.

"Account Evidence" means your passbook, TCF EXPRESS TELLER Card, TCF EXPRESS TELLER Check Card, or other documents that you use to make deposits, withdrawals (including debits), and other transactions on your Account.

"Available Funds" means deposits, or portions of deposits, that are available for withdrawal or to pay checks, items, or other transactions. Deposits to your Account may not be available for withdrawal or to pay checks, items, or other transactions for a number of days after the deposit is made. The number of days is stated in TCF's Funds Availability Schedule for Checking and Savings Accounts. Notices to you may describe your Available Funds balance as the "Withdrawable Balance". When you make a deposit your Available Funds balance (or Withdrawable Balance) will only increase when the deposit becomes Available Funds.

"Point-of-Sale Transaction" or "POS Transaction" means a deduction from your Account initiated by the use of your TCF EXPRESS TELLER Card or TCF EXPRESS TELLER Check Card that is paid to a third party merchant to pay the merchant for goods, property or services that are purchased from the merchant or to obtain cash, or both. A POS credit transaction will be made to your Account if you received a refund for goods, property or services that were purchased from a merchant with your TCF EXPRESS TELLER Card or TCF EXPRESS Check Card unless you receive a cash refund from the merchant.

### SHARING CUSTOMER INFORMATION

For information about TCF's sharing of customer information both within TCF and with parties outside TCF, see TCF's Privacy Policy.

### YOUR CONTRACT WITH TCF

You have a contract ("Account Contract") with TCF covering your Account. Your Account Contract consists of:

- These Checking and Savings Account Terms and Conditions
- Your Account Agreement
- Your Account Application (if applicable)
- Your Account Evidence
- The agreement for any additional services you request (such as TCF's Agreement for Electronic Fund Transfers Services or Online Banking Services)
- TCF's Deposit Account Services and Prices Schedule
- TCF's Funds Availability Schedule for Checking and Savings Accounts
- TCF's Current Rates and Yields Schedule
- TCF's Privacy Policy

TCF MAY CHANGE OR MAKE ADDITIONS TO YOUR ACCOUNT CONTRACT FROM TIME TO TIME. TCF will not notify you of any changes or additions unless TCF is required to do so by federal law or regulations. If TCF is required to notify you of a change or addition, TCF will do so within the time required by the federal law or regulations. Current copies of the documents listed above are available at your local TCF branch. All changes or additions are effective immediately unless TCF states otherwise in a notice to you.

IF YOUR ACCOUNT PAYS INTEREST, TCF HAS THE RIGHT TO CHANGE THE INTEREST RATE PAYABLE ON THE ACCOUNT FROM TIME TO TIME WITHOUT NOTIFYING YOU. You can find out the current interest rates by visiting or calling any TCF office.

### WHO MAY USE YOUR ACCOUNT

You may not permit anyone else to use your Account, unless you have named someone else to use your Account according to TCF's procedures.

### REQUIREMENTS FOR WITHDRAWALS AND OTHER REQUESTS

When you request a withdrawal, you must present your Account Evidence. TCF may also require additional identification, including but not limited to your secret code number or driver's license. TCF may make exceptions to these requirements. TCF may rely on any document with your signature. TCF does not have to ask questions of the person giving TCF a request with your signature, or investigate any request with your signature.

### DEPOSITS

If you deposit a check or make any other type of deposit, TCF is required to make the funds from the deposit available (such as for honoring checks or making cash withdrawals) within a certain number of days. The number of days for the funds to become available is stated in TCF's Funds Availability Schedule for Checking and Savings Accounts which you received when you opened your Account. (You may also obtain a Funds Availability Schedule for Checking and Savings Accounts at any TCF office.) When the funds from a deposit become available under the Funds Availability Schedule the funds are called "Available Funds".

If your Account pays interest, interest begins only when TCF receives credit for the deposit, not when the deposit is made.

TCF may refuse to accept any deposit to your Account, and may refuse to accept any deposit at an automated teller machine.

TCF is not required to notify you of any oral, written, or electronic order to deposit funds into your Account other than the notice you receive in your monthly statement, if applicable. This applies to transfers described in TCF's Agreement for Electronic Fund Transfers Services, as well as wire transfers, telephone transfers you initiate through a TCF employee (if permitted by TCF) and any automated transfers to your Account initiated by TCF. TCF will, however, confirm the deposit of funds to your Account if you call. Here's how:

Colorado	1-888-823-2640
Illinois/Indiana	1-847-678-6900
	1-800-823-2265 (TCF-BANK)
Michigan	1-866-823-2265 (TCF-BANK)
Minnesota	1-612-823-2265 (TCF-BANK)
Wisconsin	1-414-352-6845
	1-888-823-5463 (TCF-LINE)

TCF may reverse any deposit credited to your Account up until the time TCF received final payment for the deposit. TCF may do this without notice, other than the notice you receive in your periodic statement, if you receive one.

### RETURNED DEPOSITED CHECKS, CASHED CHECKS, AND OTHER NON-CASH ITEMS

If you deposit or receive cash or other value for any check or other non-cash item, and the check or other non-cash item is returned unpaid to TCF, or TCF receives notice of a claim for the return of the funds, TCF has the right to deduct the amount of the check or non-cash item from your Account or any other Account held by any of you with TCF. TCF also has the right to deduct any related expenses, fees, and interest from your Account or any other Account held by any of you with TCF. TCF may do this without notice, other than notice you receive in your periodic statement, if you receive one.

If you deposit or receive cash or other value for any check or other non-cash item, and the check or other non-cash item is returned unpaid to TCF because of insufficient Available Funds, TCF may resubmit the item for payment, without any notice to you.

### NSF/OVERDRAFTS

If any check, item, or other transaction (such as an automated teller machine transaction, Point-of-Sale Transaction, including Check Card transactions, or an automatic payment request that you authorize in advance) is presented for payment and there are insufficient Available Funds in your Account, TCF may charge you an NSF/overdraft fee. TCF may charge this fee regardless of whether TCF pays the check, item, or other transaction or returns the check, item, or other transaction unpaid. For checks, items, or other transactions that you authorize in advance, TCF will charge the fee each time any check, item, or other transaction is presented for payment when there are insufficient Available Funds in your Account.

If you wish to avoid overdraft expenses on your checking account, ask about TCF's overdraft line of credit service. TCF is not required to pay any check, item, or other transaction if you have insufficient

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Available Funds in your Account. You agree to immediately pay the amount by which your Account is overdrawn.

### FAIR CREDIT REPORTING ACT NOTICE

TCF decides whether to pay a check, item, or other transaction drawn on insufficient Available Funds based in part on internal guidelines that place customers in different categories based on TCF's estimation of how likely it is that the customer will cause TCF a deposit loss. TCF uses information from TransUnion, 2 Baldwin Place, P.O. Box 1000, Chester, PA 19322, (800) 888-4233 (a consumer reporting agency) in whole or in part to assign you to one of these categories. You have a right under the Fair Credit Reporting Act to know the information contained in your file at the consumer reporting agency. The reporting agency played no part in TCF's decision and is unable to supply specific reasons why TCF assigned you to a particular category. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

### CHARGES

TCF may charge you for servicing your Account (even if you do not use it) according to its current Deposit Account Services and Prices Schedule, which TCF may change from time to time. You may obtain a Deposit Account Services and Prices Schedule at any TCF office. TCF deducts all charges from your Account without notifying you in advance. TCF is not responsible for any losses you may incur as a result of TCF's refusal to honor withdrawals or pay checks, items, or other transactions if there are insufficient Available Funds in your Account because of these charges. TCF's refusal may be without notice, other than the notice you receive in your periodic statement (if you receive one).

TCF may deduct any expenses related to your Account (including attorney's fees) from any TCF Account held by you. TCF may do this without notice, other than the notice you receive in your periodic statement, if you receive one.

### CLOSING YOUR ACCOUNT OR ENDING SERVICE

TCF has the right to close your Account or to end, or temporarily stop a service at any time without notice, unless notice is required by law.

You may close your Account or end or temporarily stop a service by a written request to TCF.

If your Account pays interest, TCF will not pay interest after the Account is closed for any reason. TCF automatically closes small balance accounts that are inactive for six months.

### LEGAL PROCESS AND BANKRUPTCY

If TCF receives any legal papers relating to you, such as a garnishment or levy, TCF may hold the funds in your Account until it is determined who has the legal right to them. If your Account is a joint account and the legal papers relate to any one of the joint account holders, TCF may hold the funds and pay them to the creditor without first determining the ownership interest of each joint account holder. If you file for bankruptcy, TCF may hold the funds and turn over the Account balance to the bankruptcy trustee.

If TCF is not sure how much of an Account is affected by any legal papers, or if TCF is aware of any dispute regarding your Account, TCF may hold the funds or pay them to the court.

### SEIZURE

If you owe TCF money, TCF may use the funds in your Account to pay the debt. This is called the right of "setoff." TCF may exercise its setoff rights whether or not the debt is due, unless prohibited by law. If your Account is a joint account and any joint account holder owes TCF money, TCF may use all of the funds in any Account in which you or the joint account holder has an interest to pay the debt (unless doing so is prohibited by law) without first determining how much of the deposit was contributed by that joint account holder.

### TCF NOT RESPONSIBLE IN CERTAIN CASES

TCF is not responsible for any deposit or notice you send to TCF until TCF receives it. TCF is not responsible for the loss of any deposited item if TCF handled and/or processed it according to customary banking practices. TCF is not responsible for the actions of anyone who is not a TCF employee. If TCF makes a clerical mistake or other error, TCF is not responsible for any loss to you if TCF acted in good faith and exercised ordinary care, unless required by law.

### STATEMENTS

Unless you have a passbook as Account Evidence, TCF will mail you periodic statements of Account activity. You must promptly examine the periodic statement and any paid items or images returned with (or described in) your periodic statement. If checks are not returned with your periodic statement, at your request, TCF will provide you with a copy of any copy of such check in TCF's possession. Unless otherwise stated in your Account Contract, you must notify TCF of any errors within 30 days from the statement date and give TCF any information TCF needs to investigate a claim of error. Unless TCF receives notice from you within the 30 day period, TCF is released from all liability for the transactions, unless otherwise stated in your Account Contract.

The procedures for notifying TCF of errors for electronic banking transactions and applicable time periods related to such transactions are explained in the "Agreement for Electronic Fund Transfers Services".

All products purchased through a TCF Company (Checking, Savings, Certificate of Deposit, Mutual Funds, Annuities, etc.) may be combined on one statement unless you direct us otherwise in writing. Send any notices to:

For Colorado customers:  
TCF National Bank  
9280 East Panorama Circle  
Suite 100  
Englewood, CO 80112

For Illinois/Indiana customers:  
TCF National Bank  
Customer Service  
4949 North Scott Street  
Suite 56  
Schailler Park, IL 60176

For Michigan customers:  
TCF National Bank  
Bank Central  
P.O. Box 8600  
Ann Arbor, MI 48107-8600

For Minnesota customers:  
TCF National Bank  
Customer Service  
801 Marquette Avenue  
Minneapolis, MN 55402-3475

For Wisconsin customers:  
TCF National Bank  
Customer Service  
P.O. Box 170996  
Milwaukee, WI 53217-0996

### MAILINGS

TCF may send Account statements and notices to you (or any joint Account holder) at the most recent mailing address for your Account that you or the U.S. Postal Service has provided to TCF. You are responsible for updating your address when you move and for having a correct address on file with TCF. If mail is returned as undeliverable with no forwarding address, TCF may cease mailing statements to that address, however, you will be deemed to receive any and all statements and notices mailed by TCF to the last address on file for you at TCF. In addition to any other returned mail fees charged by TCF, TCF may deduct from your Account the amount of any special fees or expenses charged by the U.S. Postal Office or other mail services in order to obtain updated or corrected addresses or to forward returned mail.

### ARBITRATION OF DISPUTES

The number one priority for TCF is maintaining a good relationship with our customers. If you encounter a problem with any of the products or services of TCF, we encourage you to contact TCF immediately. In most cases, a call to TCF or discussing the problem with one of TCF's trained branch personnel will result in a quick resolution of the problem. If we are not able to resolve the problem, any claim you may have relating to your Account will be resolved using the following procedures.

(3)

In the event of a dispute involving your Account, either you or TCF may elect to resolve the Claim by binding arbitration, provided that the electing party notifies the other party in writing of the demand for arbitration. Such notice may consist of a pleading filed in court in which the electing party demands arbitration. Arbitration is a method of deciding disputes outside the court system. This Arbitration provision governs when and how any disputes between you and TCF will be arbitrated – instead of decided in court – even if one party initially chooses to bring the case in court. Participating in a lawsuit or seeking judicial action with respect to any Claim does not waive TCF's right or your right to arbitrate any other Claims.

Binding arbitration means that you and TCF must follow the arbitration process and rules and must do whatever the arbitrator decides. The result of that process will be an award by the arbitrator resolving the Claim.

A Claim (which is subject to resolution by arbitration) includes any claim, dispute or controversy that arises from or relates to:

- your Account Contract with TCF, or the events leading up to you becoming an Account holder, including any TCF advertisements, promotions, or oral or written statements made by TCF;
- the validity, enforceability, or interpretation of this Arbitration provision;
- the validity, enforceability, or interpretation of your Account Contract with TCF;
- prior dealings between you and TCF pertaining to any other prior or existing deposit contract between you and TCF;
- future dealings between you and TCF pertaining to your Account or any other prior or existing deposit contract between you and TCF; and
- any product or service provided by third parties in connection with your Account, including (but not limited to) data processing companies, credit bureaus, service bureaus, and collection agencies.

This Arbitration provision covers all Claims, including those based on:

- contract law;
- tort law (A "tort" is an injury or wrong, such as personal injury, fraud or negligence, not based on contract, for which the law provides a legal remedy);
- prior court decisions on a subject, known as case law or common law;
- federal or state constitution, statute, regulation, rule, or municipal ordinance; or
- any other theory.

This Arbitration provision also covers requests for orders requiring you or TCF to take certain actions (which we sometimes refer to as "injunctive relief" or "equitable relief").

This Arbitration provision covers not only Claims that you may have against TCF but also Claims you may have against: (1) the parent company of TCF, TCF Financial Corporation (the "Parent Company"); (2) all companies owned or controlled by the Parent Company or TCF; (3) any company to which we transfer our rights under the Account Contract; and (4) all of the employees or other individuals who manage these companies. Finally, if either you or TCF elect(s) to arbitrate any Claim you bring against TCF or any of the above-referenced companies or persons, any other companies or persons against whom you have asserted a Claim in the same proceeding may also elect to arbitrate the Claim. Whenever "TCF" is hereafter used in this Arbitration provision, it is intended to include any of the above-referenced persons or companies.

However, a "Claim" does not include any individual claim by you or TCF, which is made in small claims court. If a claim made in small claims court is appealed or otherwise proceeds to regular court, it then becomes a "Claim" subject to arbitration by either you or TCF.

If you or TCF chooses arbitration, the arbitration will be conducted by whichever of the following you designate in writing after written notice demanding arbitration has been given by you or TCF: (1) the National Arbitration Forum; (2) the American Arbitration Association; or (3) Judicial Arbitration and Mediation Services, Inc. ("JAMS"). If you do not select an arbitration organization in writing within 20 days after you or TCF has given notice demanding arbitration, you agree that TCF may select one. The arbitration will be conducted under the code of procedure of the arbitration organization selected, in effect at the time the Claim is filed. If for any reason the selected arbitration organization is unable or unwilling or ceases to serve, you will have 20 days to select a different arbitration organization from the above list. If you fail to select a different organization within the 20-day period, TCF will select one.

If you have any questions concerning the arbitration, or if you want a copy of the rules and forms, or if you want to file a Claim, you may contact the organization at:

National Arbitration Forum  
P.O. Box 50191  
Minneapolis, MN 55405  
1-800-674-2371  
www.naf-forum.com

American Arbitration Association  
335 Madison Avenue, 10th Floor  
New York, NY 10017-4605  
www.adr.org

JAMS  
45 Broadway - 26th Floor  
New York, NY 10006  
www.jamsadr.com

Any arbitration hearing will take place in the federal judicial district in which you reside.

If you ask us to, TCF will consider in good faith any request by you to pay all or part of the fees that you will have to pay to the arbitration organization and the arbitrator. In any event, TCF will pay all fees it is required to pay under applicable law.

The arbitrator (the person who decides the Claim) will apply the law that is applicable to the facts and circumstances of the Claim. However, the arbitrator will not apply federal or state rules of civil procedure or evidence or any other state laws that pertain specifically to arbitration. The arbitrator will give written and reasoned findings of fact (a determination of what happened) and conclusions of law (legal consequences from the facts). After the arbitrator makes a decision, you or TCF may apply to a court to enter a judgment based on the decision.

This Arbitration provision will be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as amended.

ARBITRATION (if it is invoked) MEANS YOU AND TCF: (1) GIVE UP THE RIGHT TO FILE A CLAIM IN COURT (EXCEPT SMALL CLAIMS COURT); (2) GIVE UP THE RIGHT TO A JUDGE OR A JURY TRIAL; (3) WILL HAVE LIMITED DISCOVERY RIGHTS; AND (4) WILL HAVE ONLY VERY LIMITED RIGHTS OF APPEAL. ALSO, ARBITRATION WILL BE LIMITED TO YOUR CLAIMS (OR TCF'S CLAIMS) ALONE, AND JOINDER OF OTHER PARTIES OR CLASS ACTIONS WILL NOT BE PERMITTED. THIS MEANS THAT YOU WILL NOT BE ABLE TO PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION CONCERNING SUCH CLAIMS.

This Arbitration provision shall survive any suspension, termination, or closure of your Account and any bankruptcy by you, to the extent consistent with applicable bankruptcy law.

If any part of this Arbitration provision is held to be unenforceable, the remainder of the Arbitration provision will continue to be enforceable. In the event of a conflict between the arbitration organization's code and your Account Contract, including this Arbitration provision, your Account Contract controls. In the event of a conflict between this Arbitration provision and your Account Contract, this Arbitration provision controls.

#### GOVERNING LAW

TCF is a national bank and your Account Contract is governed by federal law, including implementing federal regulations.

#### NON-HANDWRITTEN (FACSIMILE) SIGNATURES

If you authorize us to honor a non-handwritten, rubber-stamped, facsimile, or other form signature (collectively "non-handwritten signature"), you agree that you shall have the sole responsibility for maintaining security of any such non-handwritten signature or device by which it is affixed and that you shall bear the entire risk of unauthorized use thereof whether or not you were negligent. You also agree that you may not assert a forged claim or unauthorized signature claim in connection with any non-handwritten signature that you have authorized TCF to honor. All such non-handwritten signatures shall be effective as your authorized signature or endorsement whether or not you were negligent. You further agree to protect, release, hold harmless, defend, and indemnify TCF from and against any and all loss, cost, damage, claims, liability or expense (including reasonable attorney fees) TCF or you may suffer or incur as a result of the unlawful, unauthorized, or improper use by any person of any such non-handwritten signature.

#### NO ILLEGAL ACTIVITY

You agree not to use your Account, including but not limited to your TCF EXPRESS TELLER Card or TCF EXPRESS TELLER Check Card, for any illegal activity.



## FOREIGN FINANCIAL INSTITUTIONS

As a result of recently enacted federal laws, the Bank has adopted a policy that it will not establish correspondent accounts for foreign financial institutions.

You agree that you are not a foreign financial institution and that you are not acting on behalf of a foreign financial institution. A "foreign financial institution" for these purposes is any of the following entities or businesses that is not organized under the laws of a State or of the United States:

- Insured bank
- Commercial bank or trust company
- Private banker
- Agency or branch of a foreign bank in the U.S.
- Insured institution
- Thrift institution
- Registered broker dealer
- Securities or commodities broker dealer
- Investment banker or investment company
- Currency exchange
- Futures commission merchants, commodity trading adviser, or commodity pool operator registered or required to be registered under the Commodity Exchange Act.
- Issuer, redeemer, or cashier of money orders, travelers' checks, checks, or similar instruments
- Operator of a credit card system
- Insurance company
- Dealer in precious metals, stones, or jewels
- Pawnbroker
- Loan or finance company
- Travel agency
- Licensed sender of money
- Telegraph company
- Automobile/airplane/boat or other vehicle sales business
- Persons involved in real estate closings and settlements
- Casino or gaming establishments with revenues of more than \$1 million

## SAFEGUARDING REQUIREMENTS AND CUSTOMARY BANKING PRACTICES

You are responsible for exercising ordinary care in the storage and handling of your Account-related documents such as checks, check blanks, deposit slips, withdrawal forms, account statements, TCF EXPRESS TELLER Card or TCF EXPRESS Check Card, etc. This includes (but is not limited to) the following safeguards:

- Using only checks, check blanks, deposit and withdrawal slips, etc. purchased through TCF or meeting TCF's specifications. TCF reserves the right to reject checks, items, or other transactions presented on non-approved, non-standard forms or on forms that do not meet the requirements for processing on TCF's check processing equipment.
- If required by TCF, you must purchase your first box of checks through TCF.
- Preventing access by unauthorized persons to checks, check blanks, deposit and withdrawal slips, etc.
- Guarding your checkbook, TCF EXPRESS TELLER Card, or TCF EXPRESS TELLER Check Card, etc. from loss or theft. In the event of loss or theft, you must notify TCF immediately.

You are responsible (and TCF is not responsible) for any losses on your Account resulting from your failure to exercise ordinary care, subject to any claims or defenses you may have under the circumstances.

TCF is responsible for processing your checks, items, or other transactions using customary banking practices, including (but not limited to) the following:

- Using automated processing (without individual visual inspection) of all checks, items, and other transactions under a certain dollar amount determined by TCF from time to time.
- Using automated screening of checks, items, and other transactions which may result in initial acceptance/processing of items not approved by TCF. TCF reserves the right to reject such checks, items, or other transactions upon subsequent manual inspection.

TCF is not responsible for any losses resulting from its observance of customary banking practices. TCF is responsible for any losses on your Account due to its failure to observe customary banking practices, subject to any claims or defenses we may have under the circumstances.

## ADDITIONAL PROVISIONS FOR ALL SAVINGS ACCOUNTS

### RIGHT TO REQUIRE NOTICE OF WITHDRAWAL

TCF has the right to require you to notify TCF in writing at least 7 days before you withdraw or transfer money from your Account or any longer period required under state law. If TCF decides to act on this right, the period starts the day TCF receives your written request.

### WITHDRAWALS AND TRANSFER REQUESTS

If you have a savings Account, no more than 6 withdrawals or transfers per monthly statement period may be made from your Account by telephone or online transfer, automatic withdrawal, or withdrawals you authorize in advance ("preauthorized withdrawals"). If you go over these limits, TCF may either change your type of Account, close your Account, or end your right to withdraw, or transfer money from your Account by telephone or online transfer, automatic withdrawal, or preauthorized withdrawal. TCF may also refuse to permit withdrawals or transfers that go over these limits and may charge you for requesting such withdrawals or transfers. TCF is not required to honor any request for a telephone or online transfer, automatic withdrawal, or preauthorized withdrawal from a passbook savings Account or certificate of deposit. Telephone or online transfers, automatic withdrawals, and preauthorized withdrawals for other Accounts, when permitted by TCF, are governed by the Agreement for Electronic Fund Transfers Services. TCF does not limit the number or amount of withdrawals and transfers from your Account to you or your other TCF Accounts if made by mail, messenger, at an automated teller machine ("ATM"), or in person, except that withdrawals and transfers at ATMs are subject to the limits stated in the Agreement for Electronic Fund Transfers Services.

## ADDITIONAL PROVISIONS FOR SAVINGS ACCOUNTS THAT HAVE CHECK ACCESS

### WITHDRAWALS AND TRANSFER REQUESTS

By federal regulation, the total number of telephone or online transfers, check withdrawals, debit card withdrawals (also known as "Point-of-Sale" or "POS" transactions), automatic withdrawals, and withdrawals you authorize in advance ("preauthorized withdrawals") that you can make from your Account is limited to 6 during a monthly statement period. In addition, no more than 3 of these 6 withdrawals may be by check or by POS transactions during a monthly statement period. If you go over these limits, TCF may either change your type of Account, close your Account, or end your right to withdraw or transfer money from your Account by telephone or online transfer, check, debit card, automatic withdrawal or transfers, and preauthorized withdrawal. TCF may also refuse to permit withdrawals or transfers that go over these limits and may charge you for requesting such withdrawals or transfers.

## ADDITIONAL PROVISIONS FOR CHECKING ACCOUNTS ONLY

### MASTER ACCOUNTS AND SUBACCOUNTS

For each checking account, TCF may establish on your behalf a master account and two subaccounts. All information that is made available to you about your Account will be at the master account level. The subaccounts are comprised of a non-transaction account and a transaction account. On the first day of the month, TCF will allocate funds between the two subaccounts as it deems appropriate. Check, items, or other transactions received by TCF that are drawn against your master account will be presented for payment against the transaction subaccount. Funds will be transferred from the non-transaction subaccount to cover checks, items, or other transactions presented against the transaction subaccount as may be needed. On the sixth transfer from the non-transaction subaccount during a month, all of the funds on deposit in the non-transaction subaccount will be transferred to the transaction subaccount. If your checking account earns interest, the use of subaccounts will not affect the interest you earn.

(5)

## ADDITIONAL PROVISIONS FOR ALL ACCOUNTS WITH CHECK ACCESS

### NO ASSIGNMENT OR LOANS

You will not assign or transfer your Account to anyone. If you assign or grant a security interest in your Account, TCF is not obligated to honor such an assignment or security interest.

### RIGHT TO REQUIRE NOTICE OF WITHDRAWALS

For checking accounts that earn interest, TCF has the right to require you to notify TCF in writing at least 7 days before you withdraw or transfer money from your Account. If TCF decides to act on this right, the period starts the day TCF receives your written request.

### ORDER OF POSTING

TCF may pay checks, items, or other transactions drawn against your Account (such as automatic teller machine transactions, debit card transactions, and automatic payment requests that you authorize in advance), and may impose charges on your Account, in any order that TCF chooses, regardless of any contrary request or instruction you make. If you overdraw the Available Funds in your Account, the order of posting may have an effect on which items are paid and/or what overdraft charges TCF imposes on your Account as a result. For example, if TCF posts a large item (or other Account charge) before a smaller item (or Account charge), TCF may dishonor more items for insufficient funds and impose more overdraft charges against you than would otherwise be the case.

### COPIES OF CHECKS

In place of returning each of your paid checks, TCF may provide the check number, amount, and date of payment in your periodic statement. If the checks are not returned to you, TCF copies (by means of microfilm, check imaging, or other reproduction) the front and back of each check processed and paid against your Account. TCF may elect, in its discretion, to provide you with check images of your paid checks with your periodic statements. Unless applicable law requires a longer period, TCF will retain copies of your checks for seven (7) years from the date the checks are charged against your Account. As soon as TCF copies a check, TCF may destroy it. Within a reasonable time after TCF receives your request, TCF will furnish a copy to you, if the request falls within the required retention period.

You can order a copy of a canceled check or other debit item, by calling TCF at the telephone number TCF may periodically designate for that purpose. When ordering a copy of a canceled check or other debit item, you must give TCF your name, account number, check number (if applicable), dollar amount, reference number, and posting date as shown on your periodic statement. TCF will mail the copy you requested to you. You will be charged for these copies according to TCF's current Deposit Account Services and Prices Schedule, which TCF may change from time to time.

You agree that check images, provided with your periodic statement, or the availability of copies of check, and the description of the posting date, item number, and amount of each paid item that TCF includes in your periodic statement, is sufficient for you to determine if forgeries or alterations have occurred.

### DATES ON CHECKS AND SPECIAL INSTRUCTIONS

TCF may pay any check on a date before the date written on the check, unless you request that TCF not pay the check before the date that is written on it (see "Stop Payment Orders and Postdated Checks" below). TCF may also pay any check that is more than 6 months old. TCF may pay any check regardless of restrictions printed on it (such as "not payable more than 10 days after date of check," or "not valid if over \$5,000") unless TCF has agreed in writing to honor the restrictions. TCF is not liable to you if it pays any check contrary to the restrictions printed on it, even if payment results in an overdraft or other checks not being paid.

### STOP PAYMENT ORDERS AND POSTDATED CHECKS

You may request a stop payment on your non-certified check, or request that TCF not pay such a check before the date written on the check, provided TCF received your request in a manner and at a time that gives TCF reasonable opportunity to act. The following rules apply to these requests:

- If you make a request orally, in person, or by telephone, TCF keeps that order in effect for 14 days.
- If you give TCF a written request, TCF keeps that request in effect for 6 or 12 months from the date of original request and payment of the applicable fee on a stop payment order depending on which time you choose, and until the date written on the check on a postdated check request. You may renew the request of a stop payment order for 6 or 12 additional months if you do so in writing. TCF is not required to honor your request after it has expired.
- You must give TCF your name, Account number, the check number, and the exact amount of the check, and any other information requested by TCF.

If you submit a valid and timely request to TCF to stop payment on your check or to not pay your check before the date written on it, and TCF pays the check by mistake, TCF does not have to put the money back into your Account unless you prove you were not liable for payment of the check and that you did not benefit from TCF's payment of your check.

### CHECK CERTIFICATION

TCF may, but it is not required to, certify your checks at your request or the request of another person. By certifying a check, TCF agrees that money is available to pay the check. TCF does not have to certify your check if there is insufficient Available Funds in your Account.

### CLOSING YOUR ACCOUNT

TCF may close your Account at any time without notice, unless notice is required by law. If your Account is closed either by you or TCF, TCF will not pay interest after the closing. If TCF closes your Account, TCF will hold any remaining funds in your Account until you claim the funds, except as provided by the laws governing unclaimed property. You may not attempt to make any deposits to your Account after it is closed, except to pay an overdraft or any fees owed to TCF. TCF is not required to pay any check, item, or other transaction presented against your Account after the Account is closed even if TCF accepts deposits after the Account is closed or there are otherwise sufficient Available Funds to pay the check, item, or other transaction. TCF does, however, have the option to pay any properly payable check, item, or other transaction presented against your Account for up to 30 days after the Account is closed, even if doing so creates an overdraft. You will immediately pay TCF the amount of any such overdraft.

For checking Accounts only, you agree to use the Account at least once every 6 months. In other words, there cannot be more than 6 months between the time checks, items, or other transactions are presented against or deposits made to your Account. If you do not use your Account, and your Account balance is \$25 or less at the end of the 6 month period, TCF will close your Account. TCF will give you 30 days notice before closing your Account for non-use. TCF's fee for closing your Account is shown in its current Deposit Account Services and Prices Schedule, which TCF may change from time to time.

### LIMITATIONS ON CASHING CHECKS

If a check drawn against your Account is presented over-the-counter for payment by a person who is not an Account holder of TCF, TCF may require identification reasonably acceptable to TCF, including a fingerprint of the person presenting the check. You agree that TCF may refuse to cash the check if the person does not provide the identification requested by TCF.

TCF may, in its discretion, limit the locations at which it will cash checks written on your Account for non-TCF Account holders. TCF may change these designated offices from time to time. The location of such designated offices is available at your local TCF branch. (A request that TCF cash the check at any other location is not a proper presentation of the check.) Payees may deposit the checks that you give them into their own account(s) in order to receive payment.

## ADDITIONAL PROVISIONS FOR CERTAIN TYPES OF ACCOUNT OWNERSHIP

### INDIVIDUAL ACCOUNTS

If you open an Account in individual ownership, you are the only person who can deposit or withdraw funds to or from the Account.

### JOINT TENANCY

If you open an Account in joint tenancy, TCF may accept withdrawal or other requests from any one of you. If one of the persons named as owner dies, the surviving joint tenant(s) owns the Account. This is the right of survivorship. If there are two or more surviving joint tenants, the survivors continue to own the Account as joint tenants with rights of survivorship.

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## **EXHIBIT C**

**Exhibit A**  
**Important Legal Notice of  
 Changes and Additions to Your  
 Account Contract Relating to:**

**Arbitration of Disputes,  
 Electronic Fund Transfers Services,  
 and Deposit Account Services and Prices**

**January 14, 2005**

**ARBITRATION OF DISPUTES**

*This notice is to advise You that TCF National Bank ("TCF") is amending Your TERMS AND CONDITIONS FOR CHECKING AND SAVINGS ACCOUNTS (the "Terms and Conditions") by replacing the existing section entitled "Arbitration of Disputes" (the "Arbitration Provision") of Your Terms and Conditions with the following Arbitration Provision. This Arbitration Provision is immediately effective for new Accounts (Accounts opened on or after January 14, 2005). For Accounts existing before January 14, 2005, You agree that this Arbitration Provision applies to all Claims on Your Account, regardless of when they arose or arise if You do not reject this Arbitration Provision as explained below.*

*This Arbitration Provision adds a new section that provides You with the opportunity to reject the Arbitration Provision if You notify TCF in writing prior to March 15, 2005. If You do not reject the Arbitration Provision by March 15, 2005, You will NOT be able to do so at a later date. All other provisions of Your Account Contract remain in full force and effect (except as amended by the other portions of this Notice), regardless of whether You use Your Account. If You have any questions, You may call TCF at: Minnesota (612) 823-2265 or (800) 228-8892; Illinois, Indiana, or Wisconsin (847) 678-6900 or (800) 823-2265; Michigan (866) 823-2265; or Colorado (888) 823-2840.*

**THE ARBITRATION PROVISION BELOW MAY  
 SUBSTANTIALLY LIMIT OR AFFECT YOUR  
 RIGHTS. PLEASE READ THE ARBITRATION  
 PROVISION CAREFULLY AND KEEP IT FOR  
 YOUR RECORDS.**

**TERMS AND CONDITIONS FOR CHECKING  
 AND SAVINGS ACCOUNTS.**

**GENERAL PROVISIONS APPLYING TO ALL  
 CHECKING AND SAVINGS ACCOUNTS.**

**Arbitration of Disputes**

Read this Arbitration Provision carefully. It limits certain rights, including Your right to pursue a claim in court, Your right to a judge or jury trial, Your right to pursue a claim as a class action, Your discovery rights, and Your rights of appeal.



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Your right to reject: If You do not want this Arbitration Provision to apply, You may reject it by mailing a written rejection notice which describes this Arbitration Provision and tells TCF that You are rejecting this Arbitration Provision to: TCF, Direct Marketing EXO-01-D, 801 Marquette Avenue South, Minneapolis, MN 55402. A rejection notice is only effective if it is signed by all Account owners and TCF receives the notice by March 15, 2005. If You do not reject this Arbitration Provision by March 15, 2005, You will not be able to reject it at a later date. If You reject this Arbitration Provision, that does not affect any other provision of Your Account Contract or the status of Your Account. If You do not reject this Arbitration Provision, it will be effective as of March 15, 2005.

- 1) The number one priority for TCF is maintaining a good relationship with our customers. If You encounter a problem with any of the products or services of TCF, we encourage You to contact TCF immediately. In most cases, a call to TCF or discussing the problem with one of TCF's trained branch personnel will result in a quick resolution of the problem. If we are not able to resolve the problem, any Claim You may have relating to Your Account will be resolved using the following procedures.
- 2) In the event of a dispute involving You or TCF, either You or TCF may elect to resolve the Claim by binding arbitration, provided that the electing party notifies the other party in writing of the demand for arbitration. Such notice may consist of a pleading filed in court in which the electing party demands arbitration. Arbitration is a method of resolving disputes in front of one or more neutral persons (called "arbitrators"), instead of having a trial in court or in front of a judge or jury. This Arbitration Provision governs when and how any disputes between You and TCF will be arbitrated - instead of decided in court - even if one party initially chooses to bring the case in court. Participating in a lawsuit or seeking judicial action with respect to any Claim does not waive TCF's right or Your right to arbitrate any other Claims. For example, if TCF started an action against You in court (and You did not request arbitration), that action and any defenses raised by You would be heard by the court. However, if You filed a counterclaim against TCF in that action and the counterclaim was covered by the scope of this "Arbitration of Disputes" section, TCF could demand that the counterclaim be arbitrated. (You also have the right to arbitrate the counterclaim rather than filing it in court.) Binding arbitration means that You and TCF must follow the arbitration process and rules and must do whatever the arbitrator decides. The result of that process will be an award by the arbitrator resolving the Claim. TCF or You

may demand arbitration at any time, even if a lawsuit has been filed, unless a judgment has been entered in the lawsuit. However, arbitration may not be demanded after the applicable statute of limitations has expired for initiating an action.

- 3) A Claim (which is subject to resolution by arbitration) includes any claim, dispute or controversy between You and TCF that arises from or relates to:
  - a) Your Account Contract with TCF, and any other documents executed by You or provided to You in connection with Your Account;
  - b) the validity, scope, enforceability, arbitrability, or interpretation of this Arbitration of Disputes provision;
  - c) the application for Your Account Contract (if any);
  - d) the events leading up to You becoming an Account holder, including (but not limited to) any disclosures, advertisements, promotions, or oral or written statements made by TCF;
  - e) the validity, scope, enforceability, arbitrability, or interpretation of Your Account Contract with TCF;
  - f) prior dealings between You and TCF, including any prior or existing obligation between You and TCF;
  - g) future dealings between You and TCF; and
  - h) any product or service provided by third parties in connection with Your Account, including (but not limited to) data processing companies, credit bureaus, service bureaus, and collection agencies.
- 4) This Arbitration Provision covers all Claims, including those based on:
  - a) contract law;
  - b) tort law (a "tort" is an injury or wrong, not based on contract law, such as personal injury or negligence, for which the law provides a legal remedy);
  - c) fraud;
  - d) equity;
  - e) prior court decisions on a subject, known as case law or common law;
  - f) federal or state constitution, statute, regulation, rule, or municipal ordinance; or
  - g) any other theory.

This Arbitration Provision also covers requests for orders requiring You or TCF to take or not take certain actions (which are sometimes referred to as "injunctive relief" or "equitable relief"). This Arbitration Provision covers not only Claims that You may have against TCF but also Claims You may have against: (1) the parent company of TCF, TCF Financial Corporation and its predecessors and successors (the "Parent Company"); (2) all companies owned or controlled by the Parent Company or TCF and their predecessors and assigns; (3) any company to which TCF transfers its rights under the Account Contract; and (4) all of the employees or other individuals who manage these companies. Finally, if either You or TCF elect(s) to arbitrate any Claim You bring against TCF, or any of the above-referenced companies or persons, any other companies or persons against whom You have asserted a Claim in the same proceeding may also elect to arbitrate the Claim. Whenever "TCF," "we," "us," or "our" is hereafter used in this Arbitration Provision, it is intended to include any of the above-referenced persons or companies.

This Arbitration Provision applies to Claims based on facts or circumstances that existed prior to or occur on or after the date of Your Account Contract. Notwithstanding the broad definition of a "Claim" set forth above, a "Claim" shall not include the use by You or TCF of any self-help or non-judicial remedy, including but not limited to non-judicial remedies to protect TCF's rights, right of set-off, or any individual judicial action by a party that is limited to preventing the other party from using a self-help or non-judicial remedy and that does not involve a request for damages or monetary relief of any kind. In addition, "Claim" does not include any of the following claims or proceedings: (a) any individual action brought by You in a small claims court or Your state's equivalent court, unless such action is transferred, removed, or appealed to a different court; (b) any action to collect, assert, protect, or realize upon or obtain possession of funds from Your Account in any bankruptcy proceeding; (c) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; and (d) any dispute concerning the validity and effect of Section 11 hereof. Notwithstanding the prior sentence, at Your request, TCF will agree to arbitrate under this Arbitration Provision any matter covered by items (b) and (c) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also not a "Claim" and shall be determined exclusively by the court and not by the arbitrator(s). If TCF is allowed to proceed

in court with respect to any of the matters covered by items (b) and (c) above, You may assert in court any defenses You may have to TCF's claims, but any claim for monetary relief You may have arising out of, relating to, or in connection with TCF's exercise of those remedies is subject to arbitration at Your or TCF's election. In such case, TCF agrees to stay TCF's exercise of any court proceeding until the arbitration award becomes final.

- 5) The party initiating the arbitration shall have the right to select the Administrator which shall be either: (1) the National Arbitration Forum; or (2) the American Arbitration Association (the "Administrator"). The arbitration will be conducted under the code of procedure of the Administrator selected, in effect at the time the Claim is filed. If for any reason, the selected Administrator is unable or unwilling to conduct the arbitration under the terms of this Arbitration Provision or ceases to serve, then such Administrator is disqualified and the party initiating the arbitration will have 20 days to select a different Administrator from the above list. If the party initiating the arbitration fails to select a different Administrator within the 20-day period, the other party may select one. Notwithstanding the normal rule that the party initiating the arbitration may select either the National Arbitration Forum or the American Arbitration Association, no arbitration may be administered, without the consent of all parties to the arbitration, by any Administrator that has in place a formal or informal policy that is inconsistent with and purports to override the terms of the Arbitration of Disputes provision. If You have any questions concerning the arbitration, or if You want a copy of the rules and forms, or if You want to file a Claim, You may contact the Administrator at:

National Arbitration Forum  
P.O. Box 50191  
Minneapolis, MN 55405  
1-800-474-2371  
www.arb-forum.com

American Arbitration Association  
Central Case Management Center  
13455 Noel Road, Suite 1750  
Dallas, TX 75240  
1-800-426-8792  
www.adr.org

- 6) Any arbitration hearing that You attend will take place at a location that is reasonably convenient to You.
- 7) At Your written request, TCF will pay all filing, hearing and/or other fees up to \$2,500 charged by the Administrator or arbitrator(s) to You for Claim(s) asserted by You in arbitration after You have paid an

amount equivalent to the fee, if any, for filing such Claim(s) in state or federal court (whichever is less) in the judicial district in which You reside. (If You have already paid a filing fee for asserting the Claim(s) in court, You will not be required to pay that amount again.) If You are required to pay any fees in excess of \$2,500 to the Administrator or the arbitrator(s) and are unable to obtain a hardship waiver from the Administrator for the payment of such fees, TCF will consider in good faith a reasonable written request by You to pay all or part of such additional fees. Each party must pay for its own attorneys, experts, and witnesses, regardless of who wins the arbitration, except where applicable law and/or the Administrator's rules provide otherwise. However, under no circumstances will TCF seek or accept reimbursement from You of amounts paid by TCF to the Administrator or to the arbitrator(s) or attorneys, experts or witnesses. TCF will under all circumstances pay any fees or expenses TCF is required to pay by law.

- 8) The arbitrator(s) will apply the substantive law that is applicable to the facts and circumstances of the Claim. The arbitrator(s) is authorized to award all remedies permitted by the substantive law that would apply if the action were pending in court. However, the arbitrator(s) will not apply federal or state rules of civil procedure or evidence or any other state laws that pertain specifically to arbitration. The arbitrator(s) will give written and reasoned findings of fact (a determination of what happened) and conclusions of law (legal consequences from the facts).
- 9) This Arbitration Provision involves interstate commerce and will be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1-16, as amended.
- 10) If TCF or You elects arbitration regarding a Claim, the other party will no longer have the right to bring any claim or action in court or to seek a judicial resolution of a Claim, in a jury trial or otherwise, except (1) a right of appeal will continue to exist to the extent permitted by the Federal Arbitration Act, and (2) if the amount claimed exceeds \$100,000, either party may appeal the award of the arbitrator to a three-arbitrator panel (administered by the Administrator) which shall reconsider de novo any aspect of the award requested by the appealing party. The decision of the panel shall be rendered by at least a majority of the panel and the costs of the appeal will be paid by the appealing party no matter which party wins the appeal. However, TCF will consider in good faith a reasonable written request by You to pay all or part of such fees. In addition, after the arbitrator(s) make(s) a decision, You or TCF may apply to court to enter a judgment based on the decision.

- 11) If arbitration is chosen, You and TCF waive the right to have any Claim arbitrated as a class action or a private attorney general action. The arbitration will be limited to Your or TCF's individual Claims only. Notwithstanding any other provision in this Arbitration Provision, if You or TCF elects to arbitrate a Claim, neither You nor TCF will have the right to: (1) participate in a class action in a court or in arbitration either as a class representative or a class member; (2) act as a private attorney general in court or in arbitration; or (3) join or consolidate Claims with claims of any other person. The validity and effect of this Section 11 shall be determined exclusively by a court and not an arbitrator.
- 12) This Arbitration Provision shall survive: (1) any modification, extension or forbearance of the Account Contract; (2) the closing of Your Account; (3) any legal proceeding by TCF to collect a debt owed by You; (4) the transfer of any property securing the Account; and (5) Your bankruptcy (except where prohibited by bankruptcy law). If any portion of this Arbitration Provision cannot be enforced, the rest of the Arbitration Provision will continue to apply, provided however, that if Section 11 above is invalidated in a proceeding in which You and TCF are involved and such invalidation becomes final, this entire Arbitration Provision shall be null and void with respect to such proceeding.
- 13) In the event of a conflict between the Administrator's code and this Arbitration Provision, this Arbitration Provision controls. In the event of a conflict between this Arbitration Provision and Your Account Contract or application, this Arbitration Provision controls. In the event of a conflict between this Arbitration Provision and the applicable substantive law, the applicable substantive law controls.

## ELECTRONIC FUND TRANSFERS SERVICES

### Summary of Amendments

Effective April 1, 2005, the method of calculating the currency exchange rate for conversion from foreign currency to U.S. currency for ATM transactions, POS Transactions, and Credit Card Transactions will change as follows:

#### Processing of ATM Transactions

The paragraph that begins: "If You make a withdrawal at an ATM located outside of the United States..." is deleted and replaced with the following paragraph:

If You make a withdrawal on or after April 1, 2005 at an ATM located outside the United States through a network that accepts the TCF ATM Card or TCF Check Card and

the ATM dispenses in a currency other than U.S. dollars, the amount of the withdrawal will be converted to a U.S. dollar equivalent. The exchange rate between the foreign transaction currency and the U.S. dollar billing currency used for processing is: (1) a rate selected by Visa® from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives; or (2) the government-mandated rate in effect for the applicable central processing date, in each instance, plus or minus any adjustment determined by TCF. The amount TCF charges is disclosed as a "Foreign Currency Conversion Fee" and is set forth in TCF's DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE. You may obtain a copy of a current DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE at any TCF branch.

#### Processing of POS Transactions

The paragraph that begins: "If You make a payment for goods or services at a merchant located outside of the United States..." is deleted and replaced with the following paragraph:

If You make a payment on or after April 1, 2005 for goods and services at a merchant located outside the United States through a network that accepts the TCF ATM Card or TCF Check Card and the payment is made in a currency other than U.S. dollars, the amount of the withdrawal will be converted to a U.S. dollar equivalent. The exchange rate between the foreign transaction currency and the U.S. dollar billing currency used for processing is: (1) a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives; or (2) the government-mandated rate in effect for the applicable central processing date, in each instance, plus or minus any adjustment determined by TCF. The amount TCF charges is disclosed as a "Foreign Currency Conversion Fee" and is set forth in TCF's DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE. You may obtain a copy of a current DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE at any TCF branch.

#### Processing of POS Transactions for Premier Checking Plus Accounts

On the back of the TCF PREMIER PLUS (TCF MILES PLUS™) CREDIT CARD APPLICATION AND AMENDMENT TO ACCOUNT CONTRACT, the paragraph that begins: "If You make a payment for goods or services at a merchant located outside of the United States..." is deleted and replaced with the following paragraph:

If You make a payment on or after April 1, 2005 for goods or services at a merchant located outside the United States through a network that accepts the TCF MILES PLUS Card, or make a withdrawal from an



ATM that dispenses in a currency other than U.S. dollars, the amount of the withdrawal will be converted to a U.S. dollar equivalent. The exchange rate between the foreign transaction currency and the U.S. dollar billing currency used for processing is: (1) a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable processing date, which rate may vary from the rate itself receives; or (2) the government-mandated rate in effect for the applicable processing date, in each instance, plus or minus any adjustment determined by TCF. The amount TCF charges is disclosed as a "Foreign Currency Conversion Fee" and is set forth in TCF's DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE. You may obtain a copy of a current DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULE at any TCF branch.

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## SERVICES AND PRICES

### Summary of Amendments

Effective April 1, 2005, the following changes and additions apply to TCF's DEPOSIT ACCOUNT SERVICES AND PRICES SCHEDULES for all deposit product types except as listed below:

### All Checking and Savings Accounts Except Commercial Checking, Premium Commercial Checking, Select Business Checking, and Business Checking with Interest

Returned Deposited Items: \$10 per returned item

### All Checking and Savings Accounts

Foreign Currency Conversion Fee: 3% of ATM withdrawal amount, POS Transaction amount, or Credit Card Transaction amount

### Regular Savings Accounts

*For Illinois, Indiana, Michigan, and Wisconsin Account Holders:*

\$4 monthly minimum balance fee if the balance in the account falls below \$300 any day in the month. Upon request, minors (under 18) are exempt from this fee. Upon request, no charge for senior citizens with direct deposit of social security checks. Upon request, no charge if interest is credited from a TCF Certificate.

### Goal Savings Accounts

\$4 monthly minimum balance fee if the balance in the account falls below \$300 any day in the month. This fee is waived if there is a transfer credit transaction made during the month.



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## **EXHIBIT D**



## **EXHIBIT E**



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CHECKING ACCOUNTS	Minimum Deposit to Open Account	Monthly Service Fee	Minimum Daily Collected Balance Required to Post Disbursements (Percentage)	Frequency of Compounding and Posting
Totally Free Checking	\$ 100	No monthly service fee.	Interest is not paid	None
Checking with Interest	\$ 100	\$7 monthly minimum balance fee if the balance falls below \$400 any day in the statement period.	\$ .01	Monthly
50+ Checking <sup>1</sup>	\$ 100	No monthly service fee.	\$ .01	Monthly
VIP Checking <sup>1</sup>	\$ 100	No monthly service fee.	\$ .01	Monthly
Wall Street Checking <sup>1</sup>	\$ 1,000	\$7 monthly minimum balance fee if balance falls below \$1,000 any day in the statement period.	\$ 1,000 (Tier II Rate) \$ .01 (Tier I Rate)	Monthly
Money Manager Preferred <sup>1</sup>	\$25,000	\$10 monthly minimum balance fee if the balance falls below \$15,000 any day in the statement period.	\$25,000 (Tier III Rate) \$ 2,500 (Tier II Rate) \$ .01 (Tier I Rate)	Monthly
Community Group Checking	\$ 50	No monthly service fee.	Interest is not paid	None
SAVINGS ACCOUNTS: Withdrawal limits may apply; see your Account Terms and Conditions Brochure and Agreement for Electronic Fund Transfer.				
Regular Savings	\$ 50	\$5 monthly balance fee if the balance in the account falls below \$200 any day in the month. Upon request, minors (under 18) exempt from service charge. Upon request, no charge for senior citizens with direct deposit of social security checks. Upon request, no charge if interest is credited from a TCF Certificate.	\$ 10	Quarterly
TCF Golden Savings <sup>1</sup>	\$ 50	\$5 monthly minimum balance fee if the balance in the account falls below \$200 any day in the month. Upon request, minors (under 18) exempt from service charge. Upon request, no charge for senior citizens with direct deposit of social security checks. Upon request, no charge if interest is credited from a TCF Certificate.	\$ 5,000 (Tier II Rate) \$ 10 (Tier I Rate)	Quarterly
Preferred Passbook <sup>1</sup>	\$25,000	\$5 monthly minimum balance fee if the balance in the account falls below \$200 any day in the month. Upon request, minors (under 18) exempt from service charge. Upon request, no charge for senior citizens with direct deposit of social security checks. Upon request, no charge if interest is credited from a TCF Certificate.	\$ 25,000 (Tier II Rate) \$ 10 (Tier I Rate)	Quarterly
TCF Goal Savings <sup>1</sup>	\$ 25	\$5 monthly minimum balance fee if the balance in the account falls below \$200 any day in the month. Upon request, minors (under 18) exempt from service charge. Upon request, no charge for senior citizens with direct deposit of social security checks. Upon request, no charge if interest is credited from a TCF Certificate.	\$ 2,500 (Tier II Rate) \$ 50 (Tier I Rate)	Quarterly
Money Market Preferred <sup>1</sup>	\$ 100	Two withdrawals per month free, \$5 per withdrawal thereafter.	\$ 25,000 (Tier IV Rate) \$ 10,000 (Tier III Rate) \$ 2,500 (Tier II Rate) \$ .01 (Tier I Rate)	Monthly
Insured Cash Management <sup>1</sup>	\$ 2,500	\$10 monthly minimum balance fee if the balance falls below \$1,000 any day in the statement period.	\$ 2,500 (Tier II Rate) \$ 50 (Tier I Rate)	Monthly
TCF Prime Yield Money Market <sup>1</sup>	\$15,000	No monthly service fee.	\$ 15,000 (Tier II Rate) \$ 50 (Tier I Rate)	Monthly
Christmas Club	\$ 2	No monthly service fee. However, no withdrawals allowed prior to the automatic withdrawal date in October.	\$ .01 (No interest paid if account closed early)	Annually
Totally Free IRA Savings Account	\$ 100	No monthly service fee.	\$ .01	Quarterly
Cash Management Retirement/Education Accounts	\$ 50	No monthly service fee.	\$ .01	Quarterly

<sup>1</sup> See Additional Services and Prices on the back of this brochure for other service fees and Account Terms and Conditions brochure for other important information. Service fees are subject to change.

<sup>2</sup> 50+ Checking is available to persons age 50 and older. VIP Checking available if a household balance of \$15,000 or more is maintained in one or more TCF deposit or certificate accounts. If household balance for VIP Checking falls below \$15,000, the account will be changed to Checking with Interest.

<sup>3</sup> Interest rate and annual percentage yield may change. At TCF's discretion, TCF may change the interest rate at any time without notice. TCF uses the daily balance method to calculate interest on Checking Accounts and Savings Accounts. The daily balance method applies a daily periodic rate to the principal in the account each day. Interest begins to accrue no later than the business day TCF receives credit for the deposit of non-cash items (for example, checks). See Funds Availability Schedule for Checking and Savings Accounts for further information (as applicable). See also, TCF's Current Rates and Yields Schedule for annual percentage yield disclosures.

<sup>4</sup> Where interest is compounded monthly, interest is also compounded at year end for any partial statement period. Interest is credited on the last day of each period.

<sup>5</sup> Checks may be requested for this account.

<sup>6</sup> Listed above are the balance tiers for this account. Rates and Annual Percentage Yields offered within two or more consecutive tiers may be the same. When this is the case, the Current Rates and Yields Schedule will show these multiple tiers as a single tier. Each tier shown reflects the current minimum balance required to obtain the applicable Annual Percentage Yield, which will be paid on the entire collected balance.

<sup>1</sup> See Additional Services and Prices on the back of this brochure for other service fees and Account Terms and Conditions Brochures for other important information. Service fees are subject to change.

<sup>2</sup> 50+ Checking is available to persons age 55 and older. VIP Checking available if a household balance of \$15,000 or more is maintained in one or more TCF deposit or certificate accounts. If household balance for VIP Checking falls below \$15,000, the account will be changed to Checking with Interest.

<sup>3</sup> Interest rate and annual percentage yield may change. At TCF's discretion, TCF may change the interest rate at any time without notice. TCF uses the daily balance method to calculate interest on Checking Accounts and Savings Accounts. The daily balance method applies a daily periodic rate to the principal in the account each day. Interest begins to accrue no later than the business day TCF receives credit for the deposit of non-cash items (for example, checks). See Funds Availability Schedule for Checking and Savings Accounts for further information (as applicable). See also, TCF's Current Rates and Yields Schedule for annual percentage yield disclosures.

<sup>4</sup> When interest is compounded monthly, interest is also compounded at year end for any partial statement period. Interest is credited on the last day of each period.

<sup>5</sup> Checks may be requested for this account.

<sup>6</sup> Listed above are the balance tiers for this account. Rates and Annual Percentage Yields offered within two or more consecutive tiers may be the same. When this is the case, the Current Rates and Yields Schedule will show these multiple tiers as a single tier. Each tier shown reflects the current minimum balance required to obtain the applicable Annual Percentage Yield, which will be paid on the entire collected balance.

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